

VOLUME I
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EXHIBITS 52-61

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 04-11193NG

SHAWN DRUMGOLD,
Plaintiff

vs.

TIMOTHY CALLAHAN,
FRANCIS M. ROACHE,
PAUL MURPHY, RICHARD WALSH,
AND THE CITY OF BOSTON,
Defendants

DEPOSITION OF STEVEN RAPPAPORT, a
witness called by counsel for the Defendant,
Richard Walsh, taken pursuant to the applicable
provisions of the Federal Rules of Civil
Procedure, before Joann Denning, a Shorthand
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the offices
of Bonner Kiernan Trebach & Crociata, One
Liberty Square, Boston, Massachusetts, on
Friday, August 4, 2006, commencing at 10 a.m.

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>
STEVEN RAPPAPORT	4	--

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1 for over 25 years -- just in case there was
2 anything on Shawn Drumgold, but I was unable to
3 find any hard file other than what's in the
4 computer.

5 Q. Did you form any opinion in regards to why
6 there wasn't the existence of the hard file?

7 A. Well, I didn't represent Mr. Drumgold on
8 appeal, and I probably would have provided
9 anything related to the case to successor
10 counsel. It's also been 14 years since I tried
11 the case, and I can't say that all my old files
12 are totally intact. There was a flood in my
13 basement about six or seven years ago. I don't
14 remember losing anything with regard to
15 Drumgold. It's just the amount of time that's
16 passed, I don't have any files on Mr. Drumgold.

17 Q. Is it fair to say that back in 1988 and 1989
18 that the murder of Tiffany Moore was probably
19 one of the most sensationalized cases of that
20 era?

21 A. There was a lot of publicity, yes.

22 Q. At that time was that one of the highest
23 profile cases that you handled as a criminal
24 defense attorney?

1 station for a period of time, the first chance
2 I got to see him he was in a common area on a
3 stairwell with a number of other people, and I
4 wasn't about to interview him in public.

5 Q. At some point in time --

6 A. Considering at that point, remember it's about
7 a week after the Moore incident.

8 Q. In the old Roxbury District Court they used to
9 off the First Session based on your experience
10 line everybody up for --

11 A. Again, I'm not that experienced in Roxbury.
12 I've had a dozen cases over the course of my
13 career there, but I do remember this day. That
14 was the only time I was ever in that part of
15 the courthouse. It just seemed kind of absurd
16 that this is where a lawyer would meet a client
17 on a murder case for the first time, amongst a
18 group of people on a stairwell.

19 Q. You could not conduct an interview with other
20 people standing by listening?

21 A. I was unable to conduct an interview at that
22 time.

23 Q. At some point in time, did you conduct an
24 intake or an interview of Shawn Drumgold?

1 case?

2 A. There was. I think Judge Barton presided over
3 that hearing. It was in the Lowell Superior
4 Court. It would have been around 1987, maybe
5 '86.

6 Q. In relationship to the interview of witnesses,
7 besides having an investigator present or
8 someone present to be a witness to any
9 interview would you reduce any interviews to
10 notes? Would you tape witnesses? What was
11 your standard operating procedure prior to your
12 appointment in the Drumgold case?

13 MS. SCAPICCHIO: Objection.

14 A. Prior to my appointment in the Drumgold case it
15 was not my procedure to tape witnesses.
16 Occasionally I would take notes. It would be
17 rare that I would have the witness sign a
18 statement unless that statement were reduced to
19 typewritten form and then brought to the
20 witness.

21 Although I can't say that there weren't
22 times when the witness didn't just say
23 something so wonderful that I didn't reduce it
24 to writing in front of the witness and have the

1 witness sign the statement, but for the most
2 part I don't think I had a standard policy
3 frankly.

4 Q. Would you acknowledge that it was important to
5 reduce to writing, even if it's in your own
6 handwriting or the witness to be interviewed
7 handwriting, the substance of interviews?

8 MS. SCAPICCHIO: Objection.

9 A. Sometimes.

10 Q. In relationship to your representation of Shawn
11 Drumgold, did you reduce to writing the
12 substance of any interviews with any witnesses
13 you conducted?

14 A. I don't have a distinct memory. I do believe
15 that there was a day during the trial when I
16 spoke to certain witnesses, the trial had
17 already begun, did not have an investigator
18 with me and did not reduce to writing.

19 Q. Who was that?

20 A. Who did I interview?

21 Q. Yes.

22 A. There was a gentleman, I believe, who lived
23 across the street from the electrical station
24 where the shooting occurred who actually had

1 been able to view from his window, second-story
2 window, part of the occurrence, and I wanted to
3 see what he had seen.

4 I don't know if I did that before trial or
5 after the trial had begun, but I do remember
6 speaking to both Tracie Peaks and Mary
7 Alexander after the trial had already begun.
8 At that time I did not have an investigator
9 with me.

10 Q. If I was to suggest that the individual that
11 lived across the street was a man by the name
12 of Simms, does that refresh your memory?

13 A. It does.

14 Q. In fact, you showed him a photograph of your
15 client?

16 A. I don't remember if I showed him a photograph
17 or not. I don't remember him making any
18 identification of my client. I do know I had a
19 photograph of my client with me.

20 Q. On that particular day, you showed a photograph
21 to Mary Alexander? I'm going to get into that
22 later.

23 A. I do recall showing a photograph to Mary
24 Alexander.

1 pretrial phase where you reduced the interviews
2 to writing?

3 A. I may have interviewed either Chris Chaney or
4 Mervin Reese at the jail. Again, I may have
5 reduced that to writing. I just don't have a
6 memory of reducing any statements to writing.

7 Q. In regards to the hearings that were conducted
8 in this case, did you take notes during the
9 course of the hearings?

10 A. It's my standard practice. I would imagine I
11 did.

12 Q. In some degree the notes helped assist you more
13 than just reading a transcript?

14 MS. SCAPICCHIO: Objection.

15 A. Sure.

16 Q. During the course of the hearings, would you
17 write notes in regards to things -- a task
18 list, things that you needed to do in the case?

19 A. As I recall, the pretrial hearings which were
20 substantial in this case did not really bear on
21 the facts of the Commonwealth's case against my
22 client. The pretrial hearings I remember in
23 this case dealt more with police misconduct as
24 a basis for suppressing a statement, whether

1 representation of Shawn Drumgold?

2 A. My best memory is I did.

3 Q. Fair to say there's no reason why you would
4 have kept the notes out?

5 MS. SCAPICCHIO: Objection.

6 A. There would have been no reason for me to do
7 that.

8 Q. Do you have a memory that you did not keep the
9 notes out?

10 A. No.

11 Q. You have no memory one way or the other?

12 A. I thought I turned over my files. Actually not
13 just copies, I thought I turned over the files.
14 I knew it by the time -- I won't get into it.
15 I was rooting very hard for Ms. Scapicchio in
16 this case.

17 Q. I understand that. When you received notice of
18 Ms. Scapicchio's representation of Shawn
19 Drumgold on the appeal, you obviously wanted to
20 do everything that you could do to help Shawn
21 Drumgold and assist Ms. Scapicchio, correct?

22 A. I think that's fair.

23 Q. As a seasoned criminal defense attorney, you
24 know how important, one, your notes were?

1 A. For purposes of appeal? I don't know if that's
2 it. My sense is that I'd want the attorney to
3 have everything that might help her.

4 Q. Which were your notes?

5 MS. SCAPICCHIO: Objection.

6 A. I just don't remember.

7 Q. You made sure that she had a copy of all the
8 discovery?

9 MS. SCAPICCHIO: Objection.

10 A. I would imagine I did.

11 Q. During the course of the pretrial phase, you
12 had your investigator conduct certain tasks,
13 whether they be interviews, obtaining
14 intelligence, criminal records, a variety of
15 things, is that correct?

16 A. I know that I would have hoped that that's what
17 my investigator would do.

18 Q. Do you have a memory of what you instructed
19 your investigator to do in this matter?

20 A. No.

21 Q. What was your standard operating procedure in
22 murder cases regarding the use of investigators
23 and what you would have them do?

24 MS. SCAPICCHIO: Objection.

1 MS. SCAPICCHIO: Objection.

2 A. He most likely did, and I remember the form of
3 his reports, AI, whatever, American
4 Investigative, AIS, would say on it, but I
5 don't have any of those reports.

6 Q. I'll represent to you that Mr. Groob has
7 testified initially -- he has to come back --
8 that he generated reports during the course of
9 his work and bills and submitted a copy of
10 those reports to you. Would you acknowledge
11 that that is accurate?

12 A. I would acknowledge that he submitted reports
13 and bills to me.

14 Q. As a result of your continued assistance for
15 Shawn Drumgold and Ms. Scapicchio, you would
16 have turned over those reports of Investigator
17 Jay Groob to Ms. Scapicchio for the purposes of
18 appeal?

19 MS. SCAPICCHIO: Objection.

20 A. I can't imagine any reason why I wouldn't. I
21 don't have any memory of specifically what I
22 turned over to Ms. Scapicchio, but I thought I
23 had turned over what I had.

24 Q. You would acknowledge that there's no privilege

1 A. I know I was seeking a lot of gang information
2 at that time which was pretty novel to be
3 looking for intelligence information that the
4 Boston Police Department was maintaining. I
5 don't think that I spoke to anybody in the
6 probation department or related to parole. I
7 don't recall whether or not I interviewed any
8 police officers.

9 Q. Did you interview any street workers, any youth
10 workers?

11 MS. SCAPICCHIO: Objection.

12 A. I may have spoken to -- not workers, but I may
13 have spoken to some gang kids. I do have a
14 memory of speaking to gang kids.

15 Q. Would you have taken notes?

16 A. I don't think they would have spoken to me if I
17 was taking notes.

18 Q. Did you reduce the substance of those
19 interviews into notes after you left them?

20 A. Probably not.

21 Q. Did you at least reduce to writing the identity
22 of the individual that you spoke to?

23 MS. SCAPICCHIO: Objection.

24 A. I would have kept a list, I'm sure. But, like

1 potential witnesses, correct?

2 A. Certainly anybody whose name may have come up
3 during the course of the trial was put on the
4 witness list, whether they were intended to be
5 witnesses or not.

6 Q. As a seasoned criminal defense attorney, do you
7 have a file on each particular witness?

8 MS. SCAPICCHIO: Objection.

9 A. I don't know. A file? No. There may have
10 been scene witnesses, a file with people that
11 would be expected to testify about the same
12 incident. I would keep them together. I
13 didn't keep a trial notebook.

14 Q. In this case and the pretrial discovery phase,
15 you filed a motion for a list of witnesses,
16 correct?

17 A. I'm sure.

18 Q. In fact, you filed a consolidated witness list
19 with Attorney George and then a subsequent
20 witness list with the government to be read to
21 the jury?

22 A. I believe that's so. I think I remember
23 Mr. George and I putting one together and then
24 -- there was not a problem. I think many of

1 they were interviewed, that you would have
2 reduced the interview to notes --

3 MS. SCAPICCHIO: Objection.

4 Q. -- in this case?

5 A. If I spoke to somebody on the phone, I probably
6 would have taken notes. If I was out in the
7 field, notes may have been taken, may not have
8 been taken.

9 Q. Is it fair to say with the number of witnesses
10 and how confusing this case was that you would
11 have reduced to writing those field interviews
12 to notes at some point in time?

13 MS. SCAPICCHIO: Objection.

14 A. Other than Tracie Peaks and Mary Alexander and
15 Mr. Simms who you mentioned before, I don't
16 have any memory of whether or not I took notes
17 of any interviews, whether I conducted the
18 interviews, whether I reduced interviews to
19 writing. With regard to those three that I
20 just mentioned, I recall interviewing them. I
21 don't recall reducing the notes -- the
22 interviews to note form. I just don't have any
23 memory.

24 Q. Did you interview or have anyone interview on

1 Q. Christopher Chaney?

2 A. I think I interviewed Christopher Chaney
3 actually at Charles Street jail once.

4 Q. Do you know if you took any notes of that
5 interview?

6 A. I don't know.

7 Q. Mervin Reese?

8 A. Maybe it was Mervin Reese that I interviewed at
9 the Charles Street jail. I have a recollection
10 of interviewing one of these two kids at the
11 Charles Street jail.

12 Q. Romero Holiday?

13 A. I may have interviewed Romero Holiday. I know
14 that Romero Holiday was a Castlegate who may
15 have been -- he may have been the kid that was
16 hospitalized and was part of the reason for the
17 ongoing dispute between the Humboldts and the
18 Castlegates.

19 Q. If I was to tell you that one of the theories
20 was that this was retribution, that was put
21 forth at trial, was that this was retribution
22 for the stabbing of Romero Holiday or shooting
23 of Romero Holiday --

24 A. I don't know if it was a stabbing or a

1 present?

2 A. Don't remember.

3 Q. Do you know if he had an attorney at any time?

4 A. I don't remember.

5 Q. Did you take notes at that interview?

6 A. I don't remember.

7 Q. Do you acknowledge that Paul Durand was an
8 important witness to support the alibi defense
9 of Shawn Drumgold?

10 MS. SCAPICCHIO: Objection.

11 A. I believe so.

12 Q. Do you acknowledge that it was prudent to write
13 down any notes of any interviews of Paul
14 Durand?

15 MS. SCAPICCHIO: Objection.

16 A. As I recall, Paul Durand was somebody that was
17 friendly with either Taylor or Drumgold, and it
18 would not have been imperative to write
19 anything down.

20 Q. Did you interview Rena Roisten or any of the
21 Roistens?

22 A. I don't remember.

23 Q. Did you interview Lisa Graham?

24 A. I don't think so.